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court to analyze its nature, — whether the plaintiff is estopped; or whether the defendant has a cross-claim, and recovery is denied to avoid circuity of action.

TAXATION OF FOREIGN BANK DEPOSITS AT DOMICILE OF OWNER. — A state may tax all persons subject to its jurisdiction, as well as all property within its borders. It may therefore impose a personal tax upon a person domiciled in the state;¹ and until recently it was generally held that such a tax could be based upon the value of all his movable property, even though it included chattels situated abroad.² This power was often rested upon the fiction that movable property is situated at the domicile of the owner, *mobilia sequuntur personam*,³ but the true nature of the tax, as in reality a personal tax, was well recognized; "the proceeding is personal only."⁴ In some states foreign chattels were not included in the tax laid upon a resident, but this was because the court found such to be the legislative will.⁵

While a resident was thus often taxed on the value of his foreign chattels, it is universally agreed that the value of foreign land can never enter into taxation.⁶ The immovable nature of land and the impossibility of conceiving of it as "attached to the person," sufficiently justify the distinction in this respect between land and chattels, but the absence of a logical distinction finally influenced the Supreme Court of the United States to hold that a state cannot, in accordance with due process of law, tax its own corporation upon the value of its chattels permanently situated outside the state.⁷ It was soon decided that the doctrine of this case does not apply to a chattel having no taxable *situs* elsewhere, like a vessel⁸ or a freight car⁹ which, though having no *situs* within the owner's domicile, is never permanently enough in any other state to be taxed there; and by the very terms of the decision itself, the doctrine does not apply to intangible property.¹⁰ The ground of distinction between cases where a tax upon the owner could, and where it could not, take into account personal property not situated within the state of his domicile, evidently was that in the one class of cases the property was not findable and taxable elsewhere, and in the other class of cases it could be found and was taxable.

¹ The Delaware Railroad Tax, 18 Wall. 206.

² Bemis v. Boston, 14 All. 366; Commonwealth v. Pennsylvania Coal Co., 197 Pa. 551.

³ "Part of his general estate attached to his person." Bradley, J., in *Coe v. Errol*, 116 U. S. 517.

⁴ Agnew, J., in *McKeen v. Northampton*, 49 Pa. 519. The opinion proceeds: "Though different kinds of property are specified as the subjects of taxation, it is not as a proceeding *in rem*, but only as affording the means and measure of taxation. The tax is assessed personally."

⁵ Hoyt v. Commissioners of Taxes, 23 N. Y. 224.

⁶ Bittinger's Estate, 129 Pa. 338, 18 Atl. 132.

⁷ Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 194; Fuller, C. J., and Holmes, J., dissenting.

⁸ Southern Pacific Co. v. Kentucky, 222 U. S. 63.

⁹ New York Central R. R. v. Miller, 202 U. S. 584.

¹⁰ "There is an obvious distinction between the tangible and intangible property . . . the latter . . . may be taxed at the domicil of the owner," *per* Brown, J., in *Union Transit Co. v. Kentucky*, 199 U. S. 194, 205.

Meanwhile a doctrine had received the sanction of the Supreme Court, that intangible property employed in business in a state has a taxable *situs* there. In a series of cases it was held that money deposited in a bank, securities, and credits employed in business in a state not that of the owner's domicile were taxable in the state in which they were employed, having there what has often been called a "business *situs*." ¹¹ Mr. Justice Holmes, indeed, went so far in the case of *Blackstone v. Miller* ¹² as to describe money on deposit as for taxing purposes the same thing as a chattel. ¹³ It may fairly be said, as a result of these cases, that a bank deposit made in a state in the course of and for the use of a business carried on within the state is taxable by the state because it has an actual *situs* there.

A recent decision of the Supreme Court in the case of *Fidelity & Columbia Trust Co. v. Louisville* ¹⁴ has, however, held that the state of domicile of the owner of the deposit might levy a tax upon it, though admitting that the state in which the deposit was made might also tax it. Mr. Justice Holmes said of the decision in *Union Refrigerator Transit Co. v. Kentucky*, *supra*, that "this court has not attempted to press the principle so far."

As a result of this decision it would seem that under no circumstances will the doctrine of *Union Refrigerator Transit Co. v. Kentucky* be applied to a tax on intangible property, whether the property has a business *situs* or is for any other reason under the taxable control of a state other than that of the owner's domicile.

STOCK DIVIDENDS AS INCOME. — "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly according to the circumstances and the time in which it is used." Mr. Justice Holmes thus commented on the fact that a word does not necessarily have the same meaning when used in a statute and in the Constitution. The Supreme Court of the United States was passing on the much-disputed question of whether a stock dividend declared by a corporation on the occasion of transferring a surplus to its capital account is income to the stockholders. This time the question came up, in the case of *Towne v. Eisner*, ¹ under the Income Tax Act of 1913.² That act provided for a tax to be "levied . . . upon the entire net income arising or accruing from all sources . . . to every citizen of the United States." The court held that a stock dividend representing a

¹¹ *New Orleans v. Stempel*, 175 U. S. 309; *Bristol v. Washington County*, 177 U. S. 133; *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S. 395.

¹² 188 U. S. 189.

¹³ "There is no doubt that the courts in New York and elsewhere have been loath to recognize a distinction for taxing purposes between what commonly is called money in the bank and actual coin in the pocket. The practical similarity more or less has obliterated the legal difference. . . . We shall not stop to discuss this aspect of the case, because we prefer to decide it upon a broader view."

¹⁴ 38 Sup. Ct. Rep. 40. See Recent Cases, page 806.

¹ 38 Sup. Ct. Rep. 158.

² 38 U. S. STAT. 114, 116, 167; COMP. STAT. (1913), § 6319.